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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/733,065	12/11/2003	Douglas L. Goedeken	P6087US (PIL0163/US)	7826

7590 08/04/2006
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EXAMINER

STULII, VERA

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 08/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/733,065

Applicant(s)

GOEDEKEN ET AL.

Examiner

Vera Stulii

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 1-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) 16-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 05/03/2004.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Election/Restrictions

Restrictions to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-15, drawn to a method of preparing a dough composition, classified in class 426, subclass 549.
- II. Claims 16-20, drawn to dough composition, classified in class 426, subclass 549.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make another and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the dough composition can be made by other methods. For example, the dough composition could be made by extrusion method.

During a telephone conversation with Mr. Daniel Schulte on July 25, 2006 a provisional election was made without traverse to prosecute the invention of Group II, claims 16-20. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-15 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one

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or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 102 and 103

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 16-20 are rejected under 35 U.S.C. 102(a) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Hansen et al. (US 6,589,583).

In regard to claims 16-20, Hansen et al. disclose a freezer-to-oven dough product that does not require proofing or thawing (Abstract). Unproofed, frozen dough product comprises flour, water, yeast and a chemical leavening system (Col.4, lines 40-41). Hansen et al. also disclose "the chemical leavening system comprises a combination of two or more chemical leaveners, in addition to an amount of yeast" (Col.6, lines 60-61). Hansen et al. teach that the chemical leavening system comprises "at least two

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chemical leavening acids" (Col.7, lines 30-31) and at least one chemical leavening base (Col.7, line 15) such as sodium bicarbonate (baking soda), ammonium bicarbonate and potassium bicarbonate (Col.7, lines 25-28). Hansen et al. teach use of 41.46% of flour and 0.80% soda, which is approximately 1.92 parts by weight of soda based on 100 parts by weight of flour. Hansen et al. also disclose the baked specific volume of from 2.2 to 2.7 (Col.16, line 5). Hansen et al. also disclose "an increase in baked specific volume of at least 200%, and up to 270% over the volume of the frozen dough product" (Col. 16, lines 20-23).

Hansen et al. do not disclose raw specific volume and baked specific volume recited by applicant. However, since dough composition of Hansen et al. comprises all ingredients in the ranges recited by applicant, the dough composition disclosed by Hansen et al. would inherently have the same raw specific volume and baked specific volume as recited by applicant.

In case of lack of such an inherency, it would have been obvious to one skilled in the art to vary amount of leavening agents, type of yeast and frozen storage time in order to achieve desired raw and baked specific volume.

Claims 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moder et al. (US 2001/0043978).

In regard to claims 16-19, Moder et al. disclose a frozen, unproofed (Abstract, [0010]) dough composition comprising flour, water (Abstract), yeast ([0105]), basic chemical leavening agent ([0060]), and acidic chemical leavening agent ([0060]). Moder

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et al. also disclose the specific volume of frozen, unproofed dough of about 0.8 cubic centimeters per gram to about 1.4 cubic centimeters per gram (Abstract, [0011]), which includes the range recited by applicant. Moder et al also disclose the baked specific volume of baked product prepared from frozen, unproofed dough. The baked specific volume disclosed by Moder et al. is at least 2.5 cubic centimeters per gram ([0019]), which includes the range recited by applicant.

Moder et al. do not disclose specific amount of basic chemical leavening agent. However, Moder et al. teach "the amount of leavening base present determines the amount of carbon dioxide evolved, whereas the type of leavening acid affects the speed at which the carbon dioxide is liberated. The amount of leavening base used in combination with the leavening acid should be balanced such that a minimum of unchanged reactants remain in the finished product. An excess amount of leavening base can impart a bitter flavor to the final product while excess leavening acid can make the basic product tart" ([0061]).

It would have been obvious to one skilled in the art to choose a specific amount of basic chemical leavening agent in order to achieve the amount of carbon dioxide evolved desired and to avoid bitter flavor or tartness in the final product.

Claim 20 is rejected under 35 U.S.C. 102(b) as being anticipated by Moder et al. (US 2001/0043978).

In regard to claim 20 Moder et al. discloses a frozen, unproofed (Abstract, [0010]) dough composition comprising flour, water (Abstract), yeast ([0105]), basic

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chemical leavening agent ([0060]), and acidic chemical leavening agent ([0060]). Moder et al also discloses the specific volume of frozen, unproofed dough of about 0.8 cubic centimeters per gram to about 1.4 cubic centimeters per gram (Abstract, [0011]), which includes the range recited by applicant. Moder et al also discloses the baked specific volume of baked product prepared from frozen, unproofed dough. The baked specific volume disclosed by Moder et al. is at least 2.5 cubic centimeters per gram ([0019]), which includes the range recited by applicant.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Kulkarni et al. (US 2003/0049359) disclose self-rising sheeted dough that does not require proofing (either before or after freezing the dough) and do not require thawing prior to transferring the dough to oven.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vera Stulii whose telephone number is (571) 272-3221. The examiner can normally be reached on 7:00 am-3:30 pm, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

VS

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PRIMARY EXAMINER
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